

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BENJAMIN McCOY,

Petitioner,

v.

CASE NO. 05-CV-71309-DT
HONORABLE GEORGE CARAM STEEH

KURT JONES,

Respondent.

**ORDER DENYING PETITIONER'S MOTIONS
FOR DISCOVERY AND TO EXPAND THE RECORD**

Petitioner Benjamin McCoy has filed a petition for the writ of habeas corpus under 28 U.S.C. § 2254. The pleading attacks Petitioner's state convictions for first-degree murder and assault with intent to commit murder.

Currently pending before the Court are Petitioner's motions for discovery and to expand the record. Both motions seek production of a log book maintained by the Detroit Police Department. Petitioner wants copies of pages detailing the days when he was confined on the ninth-floor lock-up of police headquarters. These pages, he contends, will prove that he was taken off the floor on numerous occasions to be interrogated, despite his request for an attorney. This allegation is related to Petitioner's habeas claim that his trial attorney was ineffective for failing to file a motion to suppress Petitioner's incriminating statement to the police.

Habeas petitioners are not entitled to discovery as a matter of course. *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). "Rule 6(a) [of the Rules Governing Section 2254 Cases in the United States District Courts] makes it clear that the scope and extent of such discovery is a matter

confided to the discretion of the District Court.” *Id.* at 909.

Petitioner also has no absolute right to expansion of the record. *See* Rule 7(a) of the Rules Governing Section 2254 Cases (“If the petition is not dismissed, the judge *may* direct the parties to expand the record by submitting additional materials relating to the petition.”) (emphasis added). Furthermore, it appears from the habeas petition that the issue of Petitioner’s statement to the police was the subject of some testimony in state court. *See* Brief in Support of Pet. for Writ of Habeas Corpus, at 35-36 (citing to MT 11-13). Until Respondent files a responsive pleading and the state court record, which are due in October, the Court finds it unnecessary to expand the record or to permit Petitioner to engage in discovery. Accordingly, Petitioner’s motions for discovery and to expand the record [Docs. 6 and 7, May 11, 2005] are denied without prejudice.

s/George Caram Steeh

GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: June 6, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on June 6, 2005, by electronic and/or ordinary mail.

s/Josephine Chaffee

Secretary/Deputy Clerk